Supreme Court, U.S.
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No. 01-1274

In The

Supreme Court of the United States

RCJ MEDICAL SERVICES, INC.,

Petitioner,

vs.

THE DIRECTOR OF THE CALIFORNIA STATE DEPARTMENT OF HEALTH SERVICES,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California Second Appellate District

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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A. INTRODUCTION

Pursuant to Rule 15.6, petitioner RCJ Medical Services, Inc. ("RCJ") must limit this Reply Brief to "new points raised in the brief in opposition." Thus, RCJ may not respond to the ad hominem arguments presented by the respondent, the Director of the California State Department of Health Services ("State DHS"), since State DHS has continuously made such ad hominem arguments throughout the lower court proceedings. However, State DHS has now raised new arguments relating to this Court's jurisdiction, which are discussed briefly below.[1]

B. JURISDICTION

According to State DHS, this Court lacks jurisdiction to review the decision of the State Court of Appeal for three reasons. Opposition Brief at 1-2. Each of those reasons must be rejected.

The first reason asserted by State DHS is that the State Court of Appeal's decision in this matter is not final. State DHS takes this position even though the State

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[1] State DHS' argument that RCJ has failed to comply with Rule 14.1(f) of the Rules of this Court (Opposition Brief at 2-3) is typical of the baseless accusations that unfortunately have been a part of State DHS' strategy throughout these proceedings. Rule 14.1(f) gives a petitioner the right to quote the relevant statutes and regulations verbatim in the body of the text or to set forth the text of the statutes and regulations in an appendix. RCJ has chosen the latter process. However, RCJ also chose to explain the relevant statutes and regulations to the Court in the text of its Petition. Rule 14.1(f) does not prohibit such a practice.

Court of Appeal, itself, has stated in its December 28, 2001, remittitur (Appendix to Petition at p. 74) that its August 23, 2001 decision "has now become final."

State DHS points out that the state superior court has determined that the final judgment of the Court of Appeal leaves certain issues "at large." Thus, because those issues remaining "at large" continue to be pending before the state superior court, this Court arguably lacks jurisdiction over the federal questions raised in RCJ's Petition for Certiorari.[2]

However, regardless of whether proceedings remain before the state superior court, this Court has jurisdiction to resolve the primary issue – the issue of the authority of the single state Medicaid agency under federal Medicaid law to delegate audit authority to another state agency. Indeed, in *Cox Broadcasting Corporation v. Cohn*, 420 U.S. 478 (1975), this Court discussed in detail the question of whether this Court had jurisdiction over a federal issue presented in a particular case where there are further proceedings to come in the lower state courts. The Court pointed out that there are at least four categories of cases in which the Court has treated the decision on the federal issue as a final judgment for purposes of 28 U.S.C. § 1257 without awaiting the completion of the additional state court proceedings. *Id.* at 477-486. The second category of cases discussed by the Court includes those which the federal issue will survive and require decision regardless

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[2] State DHS conveniently fails to point out that in the state superior court proceedings, it has insisted (and has argued that the state superior court has agreed) that only a state law issue remains at large.

of the outcome of future state court proceedings. Here, both questions presented in the Petition will ultimately have to be resolved by this Court since both involve important federal questions. Thus, the fact that proceedings continue to be pending at the state superior court level does not deprive this Court of the jurisdiction to resolve the important federal questions presented by the Petition.

The second reason asserted by State DHS as a basis for arguing that this Court lacks jurisdiction over the questions raised in the Petition is that the federal questions were not "properly raised and necessarily decided in the State Court proceedings." State DHS' Opposition Brief at p. 2. Both issues presented for review here were timely raised and discussed by the Court of Appeal. For example, virtually the entire State Court of Appeal decision involves a discussion of the first question presented for review. The Court of Appeal also addressed the second issue but did so in a manner that was inconsistent with the requirements of the controlling federal Medicaid laws and regulations prohibiting State Medicaid Plan Amendments from being applied by single state Medicaid agencies prior to their effective date. *See* Appendix to Petition, p 23. Moreover, RCJ specifically requested the Court of Appeal to rehear the case and reconsider its decision based on the argument concerning the effective date of the State Plan Amendment. The State Court of Appeal summarily rejected the Petition.

The third reason why State DHS is arguing that the Court lacks jurisdiction is because RCJ purportedly has no private right to enforce the provisions of the governing federal Medicaid statutes and regulations. Therefore,

State DHS leaps to the conclusion that RCJ has no title, right, privilege or immunity protected under the federal laws. State DHS' Opposition Brief, p. 2. State DHS fails to point out, however, that the State Court of Appeal specifically held in this very case that RCJ has the right under state law to pursue an action in state court to enforce the governing provisions of the federal Medicaid statute and regulations. *See* Appendix to Petition, pp. 20-21.

In any event, 28 U.S.C. § 1257(a) does not limit this Court's jurisdiction to review state court decisions only to those situations in which a party claims a title, right, privilege or immunity under the federal constitution or federal laws. Section 1257(a) also permits the Court to review the decision of a state court where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the federal Constitution or federal laws. Indeed recently in *Wisconsin Dept. of Health & Family v. Blumer*, ___ U.S. ___, 122 S.Ct. 962 (2002), this Court asserted jurisdiction over the final decision of a state court of appeal because the case involved the issue of whether a state statute was consistent with the federal Medicaid statutes and regulations.

Here, the State Controller audited RCJ's Medicaid claims pursuant to state laws and a state interagency agreement. *See* Opposition Brief, p. 7. This Court has jurisdiction under 28 U.S.C. § 1257(a) to determine whether reliance on the state laws and state interagency agreement was consistent with the governing federal Medicaid laws and regulations in this case.

C. CONCLUSION

Based on the foregoing, the Court is respectfully requested to reject the challenges to its jurisdiction asserted by State DHS in this case.

Dated: May 3, 2002

Respectfully submitted,

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